



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/748,811

12/30/2003

Kristine B. Fuimaono

51640/AW/W112

7196

23363 7590 03/03/2009  
CHRISTIE, PARKER & HALE, LLP  
PO BOX 7068  
PASADENA, CA 91109-7068

EXAMINER

BOUCHELLE, LAURA A

ART UNIT

PAPER NUMBER

3763

MAIL DATE

DELIVERY MODE

03/03/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/748,811	<b>Applicant(s)</b> FUIMAONO ET AL.	
	<b>Examiner</b> LAURA A. BOUCHELLE	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 November 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/20/08 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buelna et al (US 5605539) in view of Gentelia et al (US 5267994). Buelna discloses an irrigation probe comprising a rigid probe body 22 that is generally rigid (abstract), a non retractable electrode 28 defining an inner cavity and having at least one irrigation opening 30, the electrode fixedly attached to the distal end of the probe body, And a means for introducing fluid into the inner cavity including an infusion tube 36 extending though the probe body 22. See Fig. 2. The probe body, infusion tube, and electrode comprise a single unitary, generally hollow body. See Fig. 2. The device includes a handle 34.

4. Claims 1, 7 differ from Buelna in calling for the electrode form an angle with the distal end of the probe body. Gentelia teaches a probe body having an electrode 20C at the distal end

Art Unit: 3763

attached at an angle relative to the distal end of the probe body to allow for increased control and reduced damage to surrounding tissues (col. 3, lines 45-50). The limitation “attached at a single location” is interpreted to mean attached at at least a single location because being attached at a single location does not preclude it from being attached at another location as well. Being attached at a single location is different than being attached *only* at a single location. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Buelna to include an electrode attached at an angle as taught by Gentelia to allow for increased control of the electrode and reduced damage to surround tissue.

5. Claim 9 calls for a non-conductive sheath covering a portion of the tubular body.

Gentelia discloses that the probe body is made of a non-conductive material to protect the patient from accidental shocks (col. 4, lines 25-27). The sheath is considered to be a portion of the probe body. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Buelna to include a non-conductive sheath as taught by Gentelia to shield the patient from accidental shocks.

6. Claims 10-12 differ from Buelna in calling for the diameter of the probe. Buelna teaches that the probe has a diameter of 10mm (.39 in) to allow for the probe to be used with conventional laproscopic tools (col. 4, lines 14-16). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Buelna to have a diameter of about 0.4 inches as taught by Gentelia to allow the probe to be used with standard laproscopic tools.

7. Claim 14 calls for the fluid to be introduced into the probe using flexible plastic tubing. Buelna is silent as to the tubing used for delivering the infusion fluid. However, it is standard in

Art Unit: 3763

the art to use flexible plastic tubing for its biocompatibility and non-reactiveness, and it allows for the handheld tool to be moved freely while staying firmly attached to the fluid source.

Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to modify the device of Buelna to include a flexible plastic tube to deliver irrigation fluid to the tube body because such is the standard in the art.

8. Claims 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Buelna in view of Gentelia as applied to claim 7 above, and further in view of Haissaguerre et al (US 6068629). The probe of Buelna may include a first and second lumens. See Fig. 4A. Claim 24 differs from the teachings above in calling for the probe to include a stiffening wire.

Haissaguerre teaches a probe body having an electrode on the distal end and further including a stiffening wire 66 that allows the user to manipulate and adjust the probe body during use (Col. 7, lines 48-50). Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to include a stiffening wire extending through the second lumen as taught by Haissaguerre to allow the user to manipulate and adjust the probe body during use.

### ***Response to Arguments***

9. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

Art Unit: 3763

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Laura A Bouchelle  
Examiner  
Art Unit 3763

/Laura A Bouchelle/  
Examiner, Art Unit 3763

/Nicholas D Lucchesi/  
Supervisory Patent Examiner, Art Unit 3763